



Department of Defense DIRECTIVE

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June 7, 1989
NUMBER 7050.5

IG, DoD

SUBJECT: Coordination of Remedies for Fraud and Corruption Related to
Procurement Activities

- References:
- (a) DoD Directive 7050.5, subject as above, June 28, 1985 (hereby canceled)
 - (b) Public Law 97-291, "The Victim and Witness Protection Act of 1982," October 12, 1982
 - (c) Defense FAR Supplement (DFARS), Subpart 4.6, "Contract Reporting"
 - (d) DoD Instruction 4105.61, "DoD Procurement Coding Manual," May 4, 1973
 - (e) DoD 4105.61-M, "Procurement Coding Manual" (Volume I), October 1988, authorized by DoD Instruction 4105.61, May 4, 1973

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A. REISSUANCE AND PURPOSE

This Directive reissues reference (a) to update policies, procedures, and responsibilities for the coordination of criminal, civil, administrative, and contractual remedies stemming from investigation of fraud or corruption related to procurement activities. More effective and timely communication of information developed during such investigations will enable the Department of Defense to take the most appropriate of the available measures.

B. APPLICABILITY

This Directive applies to the Office of the Secretary of Defense (OSD); the Inspector General, Department of Defense (IG, DoD); the Military Departments; the Defense Agencies; and the DoD Field Activities (hereafter referred to collectively as "DoD Components").

C. DEFINITIONS

1. DoD Criminal Investigative Organizations. Refers to the U.S. Army Criminal Investigation Command; the Naval Investigative Service Command; the U.S. Air Force Office of Special Investigations; and the Defense Criminal Investigative Service, Office of the IG, DoD (OIG, DoD).

2. Significant. Refers to all fraud cases involving an alleged loss of \$100,000, or more; all corruption cases related to procurement that involved bribery, gratuities, or conflicts of interest; and any investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated, regardless of loss value.

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D. POLICY

It is DoD policy that:

1. Each of the DoD Components shall monitor, from its inception, all significant investigations of fraud or corruption related to procurement activities affecting its organizations, for the purpose of ensuring that all possible criminal, civil, administrative, and contractual remedies in such cases are identified to cognizant procurement and command officials and that appropriate remedies are pursued expeditiously. This process shall include appropriate coordination with all other affected DoD Components.
2. All investigations of fraud or corruption related to procurement activities shall be reviewed to determine and implement the appropriate contractual and administrative actions that are necessary to recover funds lost through fraud or corruption and to ensure the integrity of DoD programs and operations.
3. Appropriate civil, contractual, and administrative actions, including those set forth in enclosure 1, shall be taken expeditiously. During an investigation and before prosecution or litigation, and when based in whole or in part on evidence developed during an investigation, such actions shall be taken with the advance knowledge of the responsible DoD criminal investigative organization and, when necessary, the appropriate legal counsel in the Department of Defense and the Department of Justice (DoJ). When appropriate, such actions shall be taken before final resolution of the criminal or civil case.

E. RESPONSIBILITIES

1. The Heads of DoD Components shall:
 - a. Establish a centralized organization (hereafter referred to as "the centralized organization") to monitor and ensure the coordination of criminal, civil, administrative, and contractual remedies for each significant investigation of fraud or corruption related to procurement activities affecting the DoD Component.
 - b. Establish procedures requiring the centralized organization to discuss regularly with the assigned DoD criminal investigative organization(s) such issues as the current status of significant investigations and their coordination with prosecutive authorities.
 - c. Establish procedures requiring that all coordination involving the DoJ, during the pendency of a criminal investigation, is accomplished by, or with the advance knowledge of, the appropriate DoD criminal investigative organization(s).
 - d. Establish procedures to ensure appropriate coordination of actions between the centralized organizations of any DoD Components affected by a significant investigation of fraud or corruption related to procurement activities.
 - e. Establish procedures to ensure that all proper and effective civil, administrative, and contractual remedies available to the Department of Defense are, when found applicable and appropriate, considered and undertaken promptly

by the necessary DoD officials (e.g., commanders, programs officials, and contracting officers). That includes the beginning of any suspension and debarment action within 30 days of an indictment or conviction. The centralized organization shall ensure that all proposed actions are coordinated with the appropriate investigative organizations.

f. Establish procedures to ensure that a specific comprehensive remedies plan is developed for each significant investigation involving fraud or corruption related to procurement activities. Those procedures shall include the participation of the appropriate DoD criminal investigative organization in the development of the plan.

g. Establish procedures to ensure that in those significant investigations of fraud or corruption related to procurement activities when adverse impact on a DoD mission can be determined, such adverse impact is identified and documented by the centralized organization. That information is to be used by the centralized organization of the DoD Component concerned in development of the remedies plan required in paragraph E.1.f., above, and shall be furnished to prosecutors, as stated in paragraph E.2.e., below. The information shall also be used by the centralized organizations in development and preparation of "Victim Impact Statements" for use in sentencing proceedings, as provided for in P.L. 97-291 (reference (b)). Some examples of adverse impact on a DoD mission are as follows:

- (1) Endangerment of personnel or property.
- (2) Monetary loss.
- (3) Denigration of program or personnel integrity.
- (4) Compromise of the procurement process.
- (5) Reduction or loss of mission readiness.

h. Ensure training materials are developed on fraud and corruption in the procurement process, and that all procurement and procurement-related training includes a period of such instruction appropriate for the duration and nature of the training.

i. Establish procedures enabling the centralized organization to ensure that safety and readiness issues are examined and appropriately dealt with for all cases in which a notice is required under paragraph E.2.i., below. The minimum procedures to be followed by the centralized organization are in enclosure 3.

j. Ensure that appropriate command, procurement, and investigative organizations are provided sufficient information to determine if further inquiry is warranted on their part to prevent reoccurrence and detect other possible fraud within their activity.

2. The Secretaries of the Military Departments and the Inspector General, Department of Defense (IG, DoD), or their designees, shall establish procedures that ensure that their respective criminal investigative organizations shall:

a. Notify, expeditiously in writing, the centralized organization for the affected DoD Component of the start of all significant investigations involving fraud or corruption related to procurement activities. Initial notification shall include the following elements:

- (1) Case title.
- (2) Case control number.
- (3) Investigative agency and office of primary responsibility.
- (4) Date opened.
- (5) Predication.
- (6) Suspected offense(s).

b. Notify expeditiously the Defense Investigative Service (DIS) of any investigations that develop evidence that would impact on DoD-cleared industrial facilities or personnel.

c. Discuss regularly with the centralized organization such issues as the current status of significant investigations and their coordination with prosecutive authorities. If the DoD criminal investigative organization has prepared any documents summarizing the current status of the investigation, such documents shall be provided to the centralized organization. Completed reports of significant investigations also should be provided to the centralized organization.

d. Provide to the appropriate procurement officials, commanders, and suspension and debarment authorities, when needed to allow consideration of applicable remedies, any court records, documents, or other evidence of fraud or corruption related to procurement activities. Such information shall be provided expeditiously to enable the suspension and debarment authority to begin suspension and debarment action within 30 days of an indictment or conviction.

e. Provide expeditiously to prosecutive authorities the information on any adverse impact on a DoD mission, which is gathered under paragraph E.1.g., above, for enhancing the prosecutability of a case. Such information also should be used in preparing a victim impact statement for use in sentencing proceedings, as provided for in P.L. 97-291 (reference (b)).

f. Gather, at the earliest practical point in the investigation, without reliance on grand jury subpoenas whenever possible, relevant information on responsible individuals, the organizational structure, finances, and contract history of DoD contractors under investigation for fraud or corruption related to procurement activities, to facilitate the criminal investigation as well as any civil, administrative, or contractual actions or remedies that may be taken. Some available sources of such information are listed in enclosure 2.

g. Provide timely notice to other cognizant DoD criminal investigative organizations of evidence of fraud by a contractor, subcontractor, or employees of either, on current or past contracts with, or affecting, other DoD Components.

h. Ascertain the impact on any ongoing investigation or prosecution of civil, contractual, and administrative actions being considered and advise the appropriate centralized organization of any adverse impact.

i. Obtain a DD 350 report in every investigation into defective products or product substitution in which a SERIOUS HAZARD to health, safety, or operational readiness is indicated. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

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j. Obtain a DD 350 report in all significant fraud investigations, as defined in subsection C.2 above, whether or not the case involved defective products or product substitution. Timely notification shall be made to the centralized organization of each DoD Component that is identified as having contract actions with the subject of the investigation.

3. The Inspector General, Department of Defense (IG, DoD), shall:

a. Develop training materials on fraud and corruption in procurement-related activities, which shall be utilized in all procurement related training in conjunction with training materials developed by the DoD Components. (See paragraph E.1.h., above.)

b. Establish procedures for providing to the DoD criminal investigative organizations, through the Office of the Assistant Inspector General for Auditing (OAIG-AUD), reports of data in the "Individual Procurement Action Report" (DD Form 350) system.

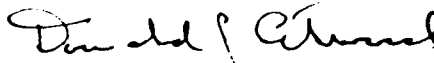
F. PROCEDURES

Transmissions of information by DoD criminal investigative organizations required by subsection E.2., above, shall be made expeditiously and consistently with efforts not to compromise any ongoing criminal investigation. The transmission of the information may be delayed when, in the judgment of the head of the DoD criminal investigative organization, failure to delay would compromise the success of any investigation or prosecution. The prosecutive authorities dealing with the investigation shall be consulted, when appropriate, in making such determinations.

G. EFFECTIVE DATE AND IMPLEMENTATION

This Directive is effective immediately. Forward two copies of implementing documents to the Inspector General, Department of Defense, within 120 days.

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Donald J. Atwood
Deputy Secretary of Defense

Enclosures - 3

1. Civil, Contractual, and Administrative Actions That Can Be Taken in Response to Evidence of Procurement Fraud
2. Sources of Information Relating to Government Contractors
3. Actions to be Taken in Product Substitution Investigations

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CIVIL, CONTRACTUAL, AND ADMINISTRATIVE ACTIONS THAT CAN
BE TAKEN IN RESPONSE TO EVIDENCE OF PROCUREMENT FRAUD

A. CIVIL

1. Statutory

- a. "False Claims Act" (31 U.S.C. 3729 et seq.).
- b. "Anti-Kickback Act" (41 U.S.C. 51 et seq.).
- c. "Voiding Contracts" (18 U.S.C. 218).
- d. "Truth in Negotiations Act" (19 U.S.C. 2306(f)).
- e. "Fraudulent Claims--Contract Disputes Act" (41 U.S.C. 604).

2. Nonstatutory

- a. Breach of contract.
- b. Breach of warranty.
- c. Money paid under mistake of fact.
- d. Unjust enrichment.
- e. Fraud and/or Deceit.
- f. Conversion.
- g. Rescission and/or Cancellation.
- h. Reformation.
- i. Enforcement of performance bond and/or guarantee agreement.

B. CONTRACTUAL

1. Termination of contract for default.
2. Termination of contract for convenience of Government.
3. Termination for default and exemplary damages under the gratuities clause.
4. Rescission of contract.
5. Contract warranties.
6. Withholding of payments to contractor.
7. Offset of payments due to contractor from other contracts.
8. Price reduction.
9. Correction of defects (or cost of correction).
10. Refusal to accept nonconforming goods.
11. Revocation of acceptance.
12. Denial of claims submitted by contractors.
13. Disallowance of contract costs.
14. Removal of the contractor from automated solicitation or payment system.

C. ADMINISTRATIVE

1. Change in contracting forms and procedures.
2. Removal or reassignment of Government personnel.
3. Review of contract administration and payment controls.
4. Revocation of warrant of contracting officer.
5. Suspension of contractor and contractor employees.
6. Debarment of contractor and contractor employees.

7. Revocation of facility security clearances.
8. Nonaward of contract based upon a finding of contractor nonresponsibility.
9. Voluntary refunds.

SOURCES OF INFORMATION RELATING TO GOVERNMENT CONTRACTORS

<u>Type of Information</u>	<u>Possible Source</u>
1. Location, dollar value, type, and number of current contracts with the Department of Defense.	a. DD Form 350 Report. ¹ b. Defense Logistics Agency's (DLA) "Contract Administration Report" (CAR) on contracts DLA administers.
2. Financial status of corporation, history of corporation, owners, and officers.	a. Dunn and Bradstreet Reports. b. Corporate filings with local secretaries of the States or corporate recorders. c. Securities and Exchange Commission (SEC) (public corporations). d. Small Business Administration (SBA) (small businesses). e. General Accounting Office (GAO) (bid protests and contractors indebted to the Government). f. Armed Services Board of Contract Appeals (ASBCA) or court litigation. g. "List of Contractors Indebted to the United States" (maintained, published, and distributed by the U.S. Army Finance and Accounting Center, Indianapolis, Indiana 46249)
3. Security clearance background information on facility and officers.	a. Defense Investigative Service (DIS)

¹ A determination as to the contract history of any DoD contractor with contracts in excess of \$25,000 annually can be made through a review of the "Individual Procurement Action Report" (DD Form 350) system, as prescribed by Subpart 4.6 of the DoD FAR Supplement, DoD Instruction 4105.61, and DoD 4105.61-M (references (c), (d), and (e)).

Type of Information

Possible Source

4. Performance history of contractor.

a. Local contracting officers.

b. Defense contract administration service pre-award surveys.

c. SBA Certificate of Competency records.

5. Name, location, offense alleged, and previous investigative efforts involving DLA-awarded or DLA-administered contracts.

DLA Automated Criminal Case Management System. (Available through field offices of the DLA General Counsel's office.)

6. Bid protests, litigation, and bankruptcy involving DLA-awarded or DLA-administered contracts.

Field offices of the DLA General Counsel's office.

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ACTIONS TO BE TAKEN IN
PRODUCT SUBSTITUTION INVESTIGATIONS

A. The centralized organization, in all cases involving allegations of product substitution in which a **SERIOUS HAZARD** to health, safety, or operational readiness is indicated, shall:

1. Review the notice of the case immediately after receiving it from the Defense criminal investigative organization. Review the notice to determine any potential safety or readiness issues indicated by the suspected fraud.

2. Notify all appropriate safety, procurement, and program officials of the existence of the case.

3. Obtain a complete assessment from safety, procurement, and program officials of the adverse impact of the fraud on DoD programs and operations.

4. Ensure that the DoD Component provides the Defense criminal investigative organization with full testing support to completely identify the defective nature of the substituted products. Costs associated with the testing shall be assumed by the appropriate procurement program.

5. Prepare a comprehensive impact statement describing the adverse impact of the fraud on DoD programs for use in any criminal, civil, or contractual action related to the case.

B. In all cases involving allegations of product substitution that affect more than one DoD Component, the centralized organizations of the affected DoD Components shall identify a lead Agency. The lead centralized organization shall ensure that information on the fraud is provided to the centralized organization of all other affected DoD Components. The lead centralized organization shall ensure compliance with the requirements of section A., above. The lead centralized organization shall then be responsible for preparing a comprehensive "Victim Impact Statement" as required by paragraph E.1.g. of this Directive.

C. In all cases involving allegations of product substitution, the Defense Criminal Investigative Organization shall:

1. Immediately notify the appropriate centralized organization of the beginning of the case.

2. Continue to provide to the centralized organization any information developed during the course of the investigation that indicates substituted products have been, or might be, provided to the Department of Defense.

3. Ensure that any request for testing of substituted products is provided to the centralized organization.